- **2(A)** **NOTICE: FAILURE TO PROVIDE - VIOLATION**
- **3(C)** **OPEN MEETING REQUIREMENT: EFFECTIVELY VIOLATED BY FAILING TO PROVIDE NOTICE**
- **4(A)(2)** **CLOSED-SESSION PRACTICES: FAILURE TO COMPLY WITH SECTION 3-305(D) – VIOLATION**
- **6(B)(3)** **MINUTES: FAILURE TO PREPARE - VIOLATION**
- **7(D)** **COMPLIANCE BOARD OPINIONS: CLAIM THAT TOPIC DISCUSSED IN CLOSED SESSION FELL WITHIN AN EXCEPTION – NOT CONSIDERED WHEN MEETING WAS NOT CLOSED PROPERLY**
- **7(G)** **TRAINING REQUIREMENT: DESIGNATION OF NEW TRAINEE - ADVISABLE WHEN THE FORMER DESIGNEE IS NO LONGER A MEMBER, OFFICER, OR EMPLOYEE**

***Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at** http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

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December 22, 2014

Re: City of Annapolis "Exploration Committee"
Mary and William Powell, Complainants

Mary and William Powell, Complainants, allege that the City of Annapolis "Exploration Committee," a public body that the Annapolis City Council created by resolution in March 2014, violated the Open Meetings Act by holding all of its meetings without notice to the public and thereby preventing the public from observing its conduct of public business.

The City Council resolution attached to the complaint provides for the appointment of a committee "to explore the possibility of acquiring the property at 110 Compromise Street." The resolution further provides, "if the committee recommends that the purchase of the property is feasible and beneficial to the City, at a price agreed upon with the current owners of the property, then the committee shall work with the City Council to propose the legislation necessary to complete [the transaction]." Complainants

state that the committee decided that the City should buy the property, negotiated a price, obtained a letter of intent from the sellers, and presented to the City Council a "full-blown proposal" that had been developed behind closed doors.

The City Attorney, responding on behalf of the committee, agrees that the committee violated the Act by meeting in closed sessions without having held the requisite vote and without making the requisite disclosures. He confirmed our staff's understanding that minutes had not been kept of the committee's meetings. Describing the vote and disclosure requirements as "technical requirements," the response states that, in any event, the committee's discussions pertained to the acquisition of real property, one of the topics that the Act conditionally permits a public body to discuss behind closed doors. *See* § 3-305(b)(3).[1] Stating that the committee members had believed the § 3-305(b)(3) exception to be a "safe harbor" for their closed-door discussions, the response also states, as evidence that the City Council did not intend to "preclude public transparency in the purchase consideration process," that the City Council later held public hearings on the legislation to purchase the property. Finally, the response states that the violation "will not occur again, as the Aldermen are now aware of the specific requirements of the Open Meetings Act," and it asks for guidance on additional improvements.

The relevant principles are these: A public body must meet in open session unless the Act expressly provides otherwise. § 3-301. To exclude the public from its discussion of a topic within one of the Act's fourteen express "exceptions" to that requirement, the public body must meet publicly to vote on a motion to take that action. § 3-305(d)(2)(i). To meet publicly, the public body must have first given "reasonable advance notice" that specifies the date, time, and place of the open session, invites the public to attend, and, "if appropriate," states the public body's intent to close part of the session. *See* § 3-302(a), (b). In the open session, and at the time of the vote, the presiding officer must make a written statement that articulates the public body's basis for the action. That statement must specify the provision of the Act that permits the closed session, the topics that will be discussed, and the public body's reason for excluding the public from the discussion. § 3-305(d)(2)(ii). Whether or not a topic falls within one of the fourteen exceptions, it may not be discussed in a closed session if it has not been disclosed beforehand on the written statement. Minutes of the closed session must be kept, and certain disclosures about the session

[1] All references are to the General Provisions Article of the Maryland Code. Section 3-305(b) provides: "Subject to subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to: . . . (3) consider the acquisition of real property for a public purpose and matters directly related to the acquisition . . . ." As explained below, subsection (d) sets out the conditions the public body must meet before it meets in closed session.

must be made in the minutes of the public body's next public meeting. § 3-306 (b), (c).

As applied here, these principles yield the conclusion that the committee violated the Act in six ways: (1) failing to give public notice of its meetings; (2) as a consequence of that failure, failing to meet publicly; (3) failing to vote on a motion to close—that is, failing to decide what topics it would discuss and to consider whether there was any reason to exclude the public; (4) failing to generate a written disclosure statement; (5) failing to keep minutes; and (6) failing to disclose, in later minutes of an open session, the events of the closed sessions. Without minutes, we cannot gauge the extent to which the discussions exceeded the bounds of the exception for topics relating to the acquisition of real property. Discussions on whether to recommend that the purchase of this publicly-identified property would be "beneficial" to the City might well have exceeded the exception, but it is unclear whether the committee discussed that topic.

The violations that we have found are not merely technical. As to the conditions that a public body must fulfill before it excludes the public, we recently explained:

> [E]ach [condition] implements the Act's goal of promoting the public trust in government. The vote on a motion to close the meeting for the reasons stated on the closing statement shows the public that the members have actually considered the need to exclude the public. The identification, on the closing statement, of the topics to be discussed and the statutory authority for discussing each behind closed doors demonstrates the legality of the closed session and provides the public with some information about the business that will be conducted there. And, closing statements, once the members have voted to close the meeting on the basis of the information disclosed in them, become the members' representation to the public that they will only discuss the disclosed topics and that they will keep the discussion within the confines of the statutory exception that they have claimed.

9 *OMCB Opinions* 167, 168 (2014). Closed-session minutes likewise serve a purpose; among other things, they tell us whether the closed-session discussion that was actually held strayed from the disclosures on the closing statement. *See* § 3-206(b) (closed-session minutes to be provided to Compliance Board on request). And, the post-meeting disclosures tell the public not only whether the events of the closed session matched the pre-session disclosures, but also what was actually discussed, who actually attended, and what actions the public body took. *See* § 3-306(c)(2). When

properly used, these mechanisms both serve the Act's goal of "ensur[ing] the accountability of government to the citizens of the State," § 3-102, and provide members of public bodies with a way to prove their compliance with the Act.

The violations identified here often occur when a governing body appoints a short-term committee or task force without providing for staffing by someone who is familiar with the open meetings law. In 8 *OMCB Opinions* 188, 189 (2013), for example, we found violations by a task force to which a city had assigned staff who was experienced in the matter being studied, but not in the Act, and who had resigned midstream anyway. As we had done before, we urged "officials and government bodies that create task forces to provide a level of staffing that will enable the members to do their work without violating the Act." We also recommended that appointing officials and entities routinely provide the necessary guidance to new committee members as soon as they are appointed.

We make the same suggestions here. We do so not only because those steps might prevent violations, but also because members of committees, particularly members of the public who volunteer their time, should not have to learn about the Open Meetings Act from a complaint that they have violated it. The General Assembly has implicitly agreed with those propositions; in 2013, it amended the Act to ensure that an "employee, or an officer, or a member" of each public body receive training in the Act. *See* § 3-213. We are aware that, in 2013, the City of Annapolis designated several employees to take that training. It appears, however, that one designee no longer works for the City and that neither of the others attended this committee's meetings. We therefore also suggest the City consider adopting procedures to ensure that an employee, member, or officer of each new committee has the training specified in § 3-213.

In conclusion, we have found that this committee violated the Act, and we have suggested that the City Council or other appointing authority provide the necessary guidance to new committees as soon as they are created. We have also directed the City to the training requirement set forth in § 3-213.

Open Meetings Compliance Board

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